IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 401 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

BHUPENDRAKUMAR JAGJIVANDAS PATEL

Appearance:

Mr.N.D.Gohil, APP. for Petitioner

MR HJ NANAVATI for Respondent.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. This is an appeal filed by the State against the order dated 20.3.1990 of JMFC, Manavadar in Summary Case No.89 of 1990 for an offence of violation of section 67 of the Factories Act,1948.

2. That on 18.12.1989 one Shri S.R.Bodar who is designated Inspector under section 8 (1) of the Factories Act,1948 visited the factory premises of the accused and found that one child labourer named Jyotsna Polabhai was

working in the factory employed at Sr.No.25 of Pay Roll Muster of December,1989. On ascertaining the age it was found that she was aged about 12 years viz. less than 14 years and in view of this fact it was found that accused had violated section 67 of the Factories Act, 1948 and was liable to be punished under section 92 of the said Act. In the complaint dated 20.2.1990 (exh.1) it is thereafter stated that though the offence under section 67 of the Factories Act, 1948 would be normally punishable under section 92 of the said Act, the accused was punishable not under the provisions of section 92 of the Factories Act, 1948 but under section 15(1) read with section 15(2)(a) of the Child Labour (Prohibition and Registration) Act,1986 as specified in section 14 of the said Act.

3. On behalf of the appellant it was stated that the order of sentence passed by the Trial Court was grossly inadequate and too lenient and no reason was assigned for charging less than the minimum sentence prescribed. Reliance was placed on section 14(1) of the Child Labour (Prohibition and Registration) Act,1986 to emphasise the fact that a minimum sentence had been prescribed in the Act and there was no warrant to impose a sentence less than that. It was accordingly prayed that the order imposing fine of Rs.200/- and in default thereof sentence of five days S.I. should be enhanced.

4. Shri H.J.Nanavati, appearing on behalf of the respondent stated that it was apparent from the order of the Trial Court that charge that was framed against the accused - respondent was only in relation to default under section 67 of the Factories Act,1948 and in the charge as recorded by the Trial Court the provisions of Child Labour (Prohibition and Registration) Act, 1986 had not been referred to. It was therefore urged that it was not open to the State to make out a new case in appeal at this length of time.

5. We have gone through the record and proceedings of the case. Undisputedly the accused - respondent has accepted the violation of section 67 of the Factories Act,1948. The accused has vide exhibit 2 given a pursish dated 20.3.1990 whereby after accepting that offence was committed by him it is stated that the offence is only venial and technical breach of the Factories Act, that in the past no offence had been committed, and in future care would be taken that no such offence shall be committed, that this is the first default. It was therefore pleaded that taking into consideration these factors the sentence may be imposed.

6. We have already referred to the original complaint (exh.1) wherein provisions of sections 67 and 92 of the Factories Act,1948 as also sections 15(1) and 15(2) read with section 14(1) of the Child Labour (Prohibition and Registration) Act,1986 have been specifically mentioned. Even otherwise, in our view, the law viz. existing statutory law has to be applied by the Court concerned and whether the relevant provisions have been pointed out or not, by one party or the other, it is the duty of the Court and in case of an error in applying the correct and relevant provisions of the Act, it becomes duty of the Appellate Court to correct such an error.

7. The relevant provisions of sections 67 and 92 of the Factories Act,1948 as well as sections 14 and 15 of the Child Labour (Prohibition and Registration) Act,1986 are reproduced hereunder for ready reference :

FACTORIES ACT,1948.

"67. Prohibition of employment of young children. -
No child who has not completed his fourteenth year shall be required or allowed to work in any factory".

"92.General penalty for offences. -
Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules, made thereunder or of any order in writing given thereunder the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued."

CHILD LABOUR (PROHIBITION AND REGISTRATION) ACT,1986 -

"14. Penalties.- (1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both".

"15. Modified application of certain laws in relation to penalties.- (1) Where any person is found guilty and convicted of contravention of any of the provision mentioned in sub-section (2), he shall be liable to penalties as provided in sub-sections (1) and (2) of section 14 of this Act and not under the Acts in which those provisions are contained.
(2) The provisions referred to in sub-section (1) are the provisions mentioned below :-
(a) section 67 of the Factories Act,1948;
(b) section 40 of the Mines Act,1952;
(c) section 109 of the Merchant Shipping Act,1958; and
(d) section 21 of the Motor Transport Workers Act,1961".
(emphasis supplied)

8. On plain reading of provisions of sections 67 and 92 of the Factories Act,1948 at first blush it would appear that for a default under section 67 of the said Act the penalty has to be imposed as provided in section 92 of the said Act, and normally that would be so. However, section 15(1) of the Child Labour (Prohibition and Registration) Act,1986 read with section 15(2)(a) of the said Act makes it clear that the said provision is an overriding provision and it will take precedence over the provisions of section 92 of the Factories Act,1948. Section 15(1) of the Child Labour (Prohibition and Registration) Act,1986, specifies that where any person is found guilty and convicted in contravention of any of the provisions mentioned in sub-section (2) of the said section the penalties are to be imposed as provided in sub-sections (1) and (2) of section 14 of the Child Labour (Prohibition and Registration) Act,1986 and not as provided under the Act in which those provisions (whose violation is alleged) are contained. As can be seen, section 15(2)(a) deals with a situation wherein there is contravention of section 67 of the Factories Act,1948; once offence under the said section of the Factories Act stands established the penalty has to follow as a natural corollary as prescribed under section 14(1) of the Child Labour (Prohibition and Registration) Act,1986.

9. In the present case, the commission of offence under section 67 is accepted and hence the penalty prescribed under section 14(1) of the Child Labour (Prohibition and Registration) Act,1986 has to be imposed. As provided in section 14(1) of the said Act, the minimum penalty is an imprisonment for a term of three months extending to one year or a fine of Rs.10,000/- extending to Rs.20,000/- or with both. The Trial Court has imposed fine of Rs.200/- only. The statute does not provide any discretion for imposing

penalty less than the minimum prescribed and hence, the said sentence of fine has to be enhanced to the minimum prescribed in the statute viz. Rs.10,000/-.

10. Therefore, the sentence imposed by the Trial Court shall stand modified as - it is ordered that the accused shall pay a fine of Rs.10,000/- (Rupees Ten Thousand only) for violation of provisions of section 67 of the Factories Act,1948, in default thereof the accused shall undergo simple imprisonment of three months. It is clarified that the amount of fine that may have already been paid shall be deducted and only the balance amount shall be payable by the accused.

11. This appeal is therefore partly allowed. Record and Proceedings be returned forthwith.

Sd/-

(D.A.Mehta, J)

m.m.bhatt